

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

**Feb 24, 2022**

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

KIMBERLY K,<sup>1</sup>

Plaintiff,

v.

KILOLO KIJAKAZI, Acting  
Commissioner of Social Security,<sup>2</sup>

Defendant.

No. 1:20-cv-3173-EFS

**ORDER RULING ON CROSS  
SUMMARY-JUDGMENT MOTIONS  
AND DIRECTING ENTRY OF  
JUDGMENT IN FAVOR OF  
PLAINTIFF**

Plaintiff Kimberly K. appeals the denial of benefits by the Administrative Law Judge (ALJ). Because the ALJ failed to provide clear and convincing reasons supported by substantial evidence for discounting Plaintiff's symptom reports, the Court grants Plaintiff's summary-judgment motion in part, grants the Commissioner's summary-judgment motion in part, reverses the ALJ's decision as to Plaintiff's Title XVI claims only, and remands this case for further proceedings.

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<sup>1</sup> For privacy reasons, the Court refers to every social security plaintiff by first name and last initial or as "Plaintiff." *See* LCivR 5.2(c).

<sup>2</sup> On July 9, 2021, Ms. Kijakazi became the Acting Commissioner of Social Security. She is therefore substituted for Andrew Saul as Defendant. Fed. R. Civ. P. 25(d); 42 U.S.C. § 405(g).

## I. Five-Step Disability Determination

A five-step sequential evaluation process is used to determine whether an adult claimant is disabled.<sup>3</sup> Step one assesses whether the claimant is engaged in substantial gainful activity.<sup>4</sup> If the claimant is engaged in substantial gainful activity, benefits are denied.<sup>5</sup> If not, the disability evaluation proceeds to step two.<sup>6</sup>

Step two assesses whether the claimant has a medically severe impairment or combination of impairments that significantly limit the claimant's physical or mental ability to do basic work activities.<sup>7</sup> If the claimant does not, benefits are denied.<sup>8</sup> If the claimant does, the disability evaluation proceeds to step three.<sup>9</sup>

Step three compares the claimant's impairment or combination of impairments to several recognized by the Commissioner as so severe as to preclude substantial gainful activity.<sup>10</sup> If an impairment or combination of impairments

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<sup>3</sup> 20 C.F.R. §§ 404.1520(a), 416.920(a).

<sup>4</sup> *Id.* §§ 404.1520(a)(4)(i), 416.920(a)(4)(i).

<sup>5</sup> *Id.* §§ 404.1520(b), 416.920(b).

<sup>6</sup> *Id.* §§ 404.1520(b), 416.920(b).

<sup>7</sup> *Id.* §§ 404.1520(a)(4)(ii), 416.920(a)(4)(ii).

<sup>8</sup> *Id.* §§ 404.1520(c), 416.920(c).

<sup>9</sup> *Id.* §§ 404.1520(c), 416.920(c).

<sup>10</sup> *Id.* §§ 404.1520(a)(4)(iii), 416.920(a)(4)(iii).

1 meets or equals one of the listed impairments, the claimant is conclusively  
2 presumed to be disabled.<sup>11</sup> If not, the disability evaluation proceeds to step four.

3 Step four assesses whether an impairment prevents the claimant from  
4 performing work he performed in the past by determining the claimant's residual  
5 functional capacity ("RFC").<sup>12</sup> If the claimant can perform past work, benefits are  
6 denied.<sup>13</sup> If not, the disability evaluation proceeds to step five.

7 Step five, the final step, assesses whether the claimant can perform other  
8 substantial gainful work—work that exists in significant numbers in the national  
9 economy—considering the claimant's RFC, age, education, and work experience.<sup>14</sup>  
10 If so, benefits are denied. If not, benefits are granted.<sup>15</sup>

11 The claimant has the initial burden of establishing he is entitled to disability  
12 benefits under steps one through four.<sup>16</sup> At step five, the burden shifts to the  
13 Commissioner to show the claimant is not entitled to benefits.<sup>17</sup>  
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16 <sup>11</sup> *Id.* §§ 404.1520(d), 416.920(d).

17 <sup>12</sup> *Id.* §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv).

18 <sup>13</sup> *Id.* §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv).

19 <sup>14</sup> *Id.* §§ 404.1520(a)(4)(v), 416.920(a)(4)(v); *Kail v. Heckler*, 722 F.2d 1496, 1497–98  
20 (9th Cir. 1984).

21 <sup>15</sup> 20 C.F.R. §§ 404.1520(g), 416.920(g).

22 <sup>16</sup> *Parra v. Astrue*, 481 F.3d 742, 746 (9th Cir. 2007).

23 <sup>17</sup> *Id.*

## II. Factual and Procedural Summary

On June 28, 2018, Plaintiff protectively filed an application for child's insurance benefits based on disability, a Title II application for a period of disability and disability insurance benefits, and a Title XVI application for supplemental security income; in each she alleged a disability onset date of January 1, 2011.<sup>18</sup> Her claims were denied initially and upon reconsideration.<sup>19</sup> Administrative Law Judge S. Pines presided over the requested administrative hearing by telephone.<sup>20</sup>

In the written decision denying Plaintiff's disability claims, the ALJ found as follows:

- Insured Status—December 31, 2011, was Plaintiff's date last insured.<sup>21</sup>
- Step One—Plaintiff had not engaged in substantial gainful activity since January 1, 2011, the alleged onset date.<sup>22</sup>
- Step Two—Plaintiff had the following medically determinable severe impairments:
  - anxiety,
  - panic disorder, and

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<sup>18</sup> AR 15.

<sup>19</sup> AR 15, 56, 63, 83.

<sup>20</sup> AR 15–26.

<sup>21</sup> AR 18.

<sup>22</sup> AR 18.

- trauma disorder.<sup>23</sup>
- Step Three—Plaintiff did not have an impairment or combination of impairments that met or medically equaled the severity of one of the listed impairments.<sup>24</sup>
- RFC—Plaintiff had the RFC to perform a full range of work at all exertional levels but with the following nonexertional limitations:
  - “limited to simple routine work”
  - “in a workplace with no more than occasional workplace changes”
  - “can have occasional contact with supervisors”
  - “can have occasional superficial contact with coworkers”
  - can have “brief, superficial contact with the public”<sup>25</sup>
- Step Four—There was insufficient evidence to make a definitive finding regarding past relevant work, but it did not matter because Plaintiff’s RFC allowed for the performance of other work at Step Five.<sup>26</sup>
- Step Five—Considering Plaintiff’s RFC, age, education, and work history, Plaintiff could perform work that existed in significant numbers in the national economy, such as (1) cleaner, housekeeping (DOT 323.687.014,

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<sup>23</sup> AR 18.

<sup>24</sup> AR 18–19.

<sup>25</sup> AR 19–24.

<sup>26</sup> AR 24–25.

light/svp 2); (2) inspector, hand packager (DOT 559.687-074, light/svp 2);  
and (3) kitchen helper (DOT 318.687.010, medium/svp 2).<sup>27</sup>

The ALJ concluded Plaintiff had not been under a disability, as defined in the Social Security Act (“the Act”), from January 1, 2011, through June 3, 2020.<sup>28</sup> Plaintiff requested review of the ALJ’s decision by the Appeals Council, which denied review.<sup>29</sup> Plaintiff then timely appealed to this Court, primarily challenging the ALJ’s analysis and findings regarding certain medical opinions and symptom reports by Plaintiff.

### III. Standard of Review

A district court’s review of the Commissioner’s final decision is limited.<sup>30</sup> The Commissioner’s decision is set aside “only if it is not supported by substantial evidence or is based on legal error.”<sup>31</sup> Substantial evidence is “more than a mere scintilla but less than a preponderance; it is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”<sup>32</sup> Moreover, because it is the role of the ALJ and not the Court to weigh conflicting evidence, the Court

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<sup>27</sup> AR 25.

<sup>28</sup> AR 26.

<sup>29</sup> AR 1–3.

<sup>30</sup> 42 U.S.C. § 405(g).

<sup>31</sup> *Hill v. Astrue*, 698 F.3d 1153, 1158 (9th Cir. 2012).

<sup>32</sup> *Id.* at 1159 (quoting *Sandgathe v. Chater*, 108 F.3d 978, 980 (9th Cir. 1997)).

1 upholds the ALJ's findings "if they are supported by inferences reasonably drawn  
2 from the record."<sup>33</sup> The Court considers the entire record as a whole.<sup>34</sup>

3 Further, the Court may not reverse an ALJ decision due to a harmless  
4 error.<sup>35</sup> An error is harmless "where it is inconsequential to the ultimate  
5 nondisability determination."<sup>36</sup> The party appealing the ALJ's decision generally  
6 bears the burden of establishing harm.<sup>37</sup>

#### 7 IV. Applicable Law & Analysis

8 Plaintiff alleges the ALJ erred by improperly rejecting Plaintiff's symptom  
9 reports as well as by rejecting the opinions of certain treating and examining  
10 providers.<sup>38</sup>

#### 11 A. Plaintiff's Title II & Child-Disability-Benefit Claims: Denial Affirmed

12 As a preliminary matter, although Plaintiff states that she is appealing the  
13 "denial of her Title II, XVI, and Child Disability Benefit claims," she does not  
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15 <sup>33</sup> *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012).

16 <sup>34</sup> *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035 (9th Cir. 2007) (The court "must  
17 consider the entire record as a whole, weighing both the evidence that supports and  
18 the evidence that detracts from the Commissioner's conclusion," not simply the  
19 evidence cited by the ALJ or the parties.) (cleaned up).

20 <sup>35</sup> *Molina*, 674 F.3d at 1111.

21 <sup>36</sup> *Id.* at 1115 (cleaned up).

22 <sup>37</sup> *Shinseki v. Sanders*, 556 U.S. 396, 409–10 (2009).

23 <sup>38</sup> *See, generally*, ECF No. 13 ("Plaintiff's MSJ").

1 assert any substantive arguments regarding either her Title II claim or her Child's-  
 2 Insurance-Benefits claim.<sup>39</sup> The Commissioner points out that Plaintiff "does not  
 3 challenge the ALJ's findings denying those claims" and asserts that "in reality, this  
 4 action challenges only the Title XVI application findings."<sup>40</sup> Notably, Plaintiff has  
 5 not disputed this assessment.<sup>41</sup>

6 The ALJ correctly stated as follows:

7 For the Title 2/Disability Insurance Benefits claim, the issue is  
 8 whether the claimant established disability on or before the date last  
 9 insured (December 31, 2011). The earliest treatment evidence in the  
 10 file is from 2017. Therefore, the evidence does not support the  
 11 allegation of disability on or before the date last insured.

12 For the Title 2/Child's Insurance Benefits claim, the issue is  
 13 whether the claimant has a disability that began before attainment  
 14 of age 22 (November 29, 2011). The earliest treatment evidence in the  
 15 file is from 2017. Therefore, the evidence does not support the  
 16 allegation of disability beginning before attainment of age 22.

17 Even an inferred onset date must have "a supportable medical basis and be  
 18 consistent with the nature of the condition."<sup>42</sup> Aside from Plaintiff's own  
 19 assertions, the only evidence in the record suggesting that Plaintiff might have  
 20 been disabled in 2011 comes in the form of a March 2020 check-box form in which  
 21 Plaintiff's therapist and medication manager checked "yes" to a question asking  
 22 whether Plaintiff's then-current limitations "existed since at least January 1,

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23 <sup>39</sup> Plaintiff's MSJ at 1. *See also, generally, id.*

<sup>40</sup> ECF No. 15 ("Defendant's MSJ") at 2 n.1.

<sup>41</sup> *See* ECF No. 16 ("Plaintiff's Reply").

<sup>42</sup> Soc. Sec. Admin. Program Operation Manual System (POMS) DI 25501.450.

2011.”<sup>43</sup> This isolated, unexplained medical opinion—authored about nine years after the period in question—was insufficient to establish a disability onset date back in 2011.<sup>44</sup> Accordingly, the Court affirms the ALJ’s denial of Plaintiff’s Title II claim and Child’s-Insurance-Benefits claim.

**B. Plaintiff’s Symptom Reports: Plaintiff establishes consequential error.**

Plaintiff first contends that the ALJ “reversibly erred by rejecting [Plaintiff]’s symptom testimony for reasons that were not clear and convincing.”<sup>45</sup> For the reasons discussed below, the Court agrees.

The core of Plaintiff’s disability claim stems from symptoms related to posttraumatic stress, anxiety, and panic attacks.<sup>46</sup> As a child, Plaintiff’s

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<sup>43</sup> AR 868.

<sup>44</sup> See 42 U.S.C. § 423(5)(A); *Sam v. Astrue*, 550 F.3d 808, 810 (9th Cir. 2008); *Bray v. Comm’r of Soc. Sec. Admin.*, 554 F.3d 1219, 1228 (9th Cir. 2009); *Crane v. Shalala*, 76 F.3d 251, 253 (9th Cir. 1996); see also *Lair-Del Rio v. Astrue*, 380 F. App’x 694, 695 (9th Cir. 2010) (unreported) (“[T]he record is devoid of any medical records from the relevant period—between her claimed onset date . . . and her date last insured . . . that would meet her burden to establish a disability. . . . [R]etrospective [medical opinions], written months and years after the relevant time period, are unpersuasive.”).

<sup>45</sup> Plaintiff’s MSJ at 8.

<sup>46</sup> See, e.g., AR 39, 41, 43–47, 269.

1 stepfather physically and emotionally abused both Plaintiff and her mother.<sup>47</sup> In  
 2 late summer of 2017, Plaintiff sought treatment for anxiety-related symptoms,  
 3 reporting that she had lost her job because of her anxiety and panic attacks.<sup>48</sup> She  
 4 said she frequently suffered panic attacks that interfered with her ability to work,  
 5 and she described them as causing feelings of walls closing, a racing heartbeat,  
 6 racing thoughts, and shortness of breath.<sup>49</sup>

7 Plaintiff received diagnoses of posttraumatic stress disorder (PTSD) and  
 8 anxiety disorder.<sup>50</sup> From her initial assessment in September 2017 through the  
 9 date of the administrative hearing in May 2020, Plaintiff attended therapy—  
 10 usually on a weekly basis—and took various prescribed medications aimed at  
 11 treating her mental health problems.<sup>51</sup>

12 1. The ALJ was required to provide specific, clear, and convincing reasons  
 13 for rejecting Plaintiff's symptom reports.

14 In analyzing Plaintiff's symptom reports, the ALJ found Plaintiff's  
 15 "statements concerning the intensity, persistence and limiting effects of these  
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17 <sup>47</sup> AR 266, 283, 540–41, 745.

18 <sup>48</sup> AR 209, 464,

19 <sup>49</sup> *See, e.g.*, AR 205, 262, 771, 745.

20 <sup>50</sup> *See, e.g.*, AR 264, 268, 278, 403, 464, 543, 545, 562, 620, 746, 792, 862. For  
 21 purposes of this order, the term "anxiety disorder" also refers to the similar  
 22 diagnoses of panic disorder (episodic paroxysmal anxiety). *See id.*

23 <sup>51</sup> *See generally* AR 254–869 (Plaintiff's medical records).

1 symptoms are not entirely consistent with the medical evidence and other evidence  
 2 in the record.”<sup>52</sup> As there was no evidence of malingering, the ALJ was required to  
 3 provide “specific, clear and convincing” reasons supported by substantial evidence  
 4 for rejecting Plaintiff’s symptom reports.<sup>53</sup>

5 2. The ALJ did not specify which of Plaintiff’s symptom reports were being  
 6 rejected based on the supposed inconsistencies.

7 In her decision, the ALJ highlighted activities and medical records she  
 8 perceived as inconsistent with Plaintiff’s symptom reports.<sup>54</sup> Yet, the ALJ did not  
 9 articulate which symptom reports were at issue or how they conflicted with the  
 10 cited evidence; the ALJ instead broadly stated that the symptom reports at issue  
 11 were “statements about the intensity, persistence, and limiting effects of her  
 12 symptoms.”<sup>55</sup> “[T]his boilerplate statement . . . which is routinely included in ALJ  
 13 decisions denying benefits, did not ‘identify what parts of the claimant’s testimony  
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 18 <sup>52</sup> AR 20. *See also, Molina*, 674 F.3d at 1112 (describing the two-step analysis  
 19 applicable when analyzing a claimant’s symptom reports).

20 <sup>53</sup> *See Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014) (quoting *Lingenfelter*,  
 21 504 F.3d at 1036).

22 <sup>54</sup> *See* AR 21–22.

23 <sup>55</sup> AR 21.

1 were not credible and why.” The ALJ therefore committed legal error by failing to  
 2 allow for meaningful review of the credibility analysis.<sup>56</sup>

3 3. The ALJ did not provide context by which the Court could reasonably  
 4 infer which of Plaintiff’s symptom were rejected.

5 Even if the Court were to overlook the ALJ’s failure to provide an adequate  
 6 explanation, the ALJ’s decision lacks sufficient analysis and context for the Court  
 7 to reasonably infer which symptom reports were rejected or how they were  
 8 inconsistent with other evidence. For instance, Plaintiff testified that her panic  
 9 attacks were sometimes so severe that they were “crippling,” and they affected her  
 10 ability to perform work because it could be difficult to even get up or speak.<sup>57</sup> She  
 11 testified that she usually could not predict when a panic attack would strike.<sup>58</sup>  
 12 And, throughout her years of therapy, Plaintiff reported frequencies ranging from a  
 13 low of about 2–3 panic attacks per week to a high of 5–10 panic attacks per week.<sup>59</sup>

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 15 <sup>56</sup> *Lambert v. Saul*, 980 F.3d 1266, 1277 (9th Cir. 2020) (cleaned up) (quoting  
 16 *Treichler v. Comm’r of Soc. Sec. Admin.*, 775 F.3d 1090, 1103 (9th Cir. 2014)); *see*  
 17 *also Treichler*, 775 F.3d at 1103 (“The ALJ must identify the testimony that was  
 18 not credible, and specify ‘what evidence undermines the claimant’s complaints.’”  
 19 (quoting *Reddick v. Chater*, 157 F.3d 715, 722 (9th Cir. 1998))).

20 <sup>57</sup> AR 39, 43.

21 <sup>58</sup> AR 42.

22 <sup>59</sup> AR 262 (January 2018, reporting around two panic attacks per week); AR 777  
 23 (April 2019, reporting 5–10 per week); AR 553 (October 2018, reporting 20 panic

1 During that same time, she has reported her panic attacks as lasting anywhere  
2 from just a few minutes to a full hour.<sup>60</sup>

3 Despite this, the ALJ provided no analysis or findings regarding what a  
4 typical panic-attack event would entail, how long it would last on average, or how  
5 and when such symptoms varied over time.<sup>61</sup> Nor did the ALJ discuss what  
6 impact, if any, Plaintiff's panic attacks were likely to have on factors such as her  
7 rate of absenteeism or off-task time in a workplace environment throughout the  
8 years. Put simply, the ALJ's decision lacks any means of determining whether—or  
9 to what extent—the ALJ discounted Plaintiff's various statements regarding her  
10 panic-attack symptoms. The same is true for Plaintiff's various other symptom  
11 reports.

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16 attacks in the prior month); AR 830–31 (October 2019, reporting 3–4 per week);  
17 AR 843 (December 2019, reporting 2–3 per week); AR 854 (February 2020,  
18 reporting 2–3 per week).

19 <sup>60</sup> AR 205, 564, 771, 854.

20 <sup>61</sup> See *Smith v. Kijakazi*, 14 F.4th 1108, 1112 (9th Cir. 2021) (“The ALJ discredited  
21 [the claimant]’s testimony as a whole, but her decision does not sufficiently  
22 consider the duration of, or chronological fluctuation in, [the claimant]’s  
23 symptoms.”).

- 1           4. The ALJ erred in discounting Plaintiff's symptom reports based on  
 2           Plaintiff's reported daily activities.

3           The ALJ committed further harmful error by finding Plaintiff's symptom  
 4 reports were inconsistent with her reported daily activities. In discounting  
 5 Plaintiff's symptom reports, the ALJ stated the following:

6           The claimant's statements about the intensity, persistence, and  
 7 limiting effects of her symptoms are not wholly consistent with her  
 8 daily activities. The claimant takes care of her son. Despite panic  
 9 attacks and social anxiety, the claimant takes her son to the library.  
 10 She went camping, even though this required spending time with  
 11 new people. The claimant started dating. She testified about going  
 12 shopping with a friend. Additionally, the claimant has cared for her  
 13 mother during a period of declining health.<sup>62</sup>

14 In appealing the ALJ's decision, Plaintiff rightly asserts that none of the activities  
 15 identified by the ALJ contradict her testimony of "frequent, unpredictable panic  
 16 attacks and persistent anxiety."<sup>63</sup>

- 17           a. A claimant may be disabled and still engage in a variety of  
 18           activities; the ALJ must consider the nature of each activity and  
 19           whether it is truly inconsistent with the symptoms reported.

20           Naturally, an ALJ may properly consider evidence that a claimant has  
 21 engaged in activities that tend to undermine her reported symptoms—particularly

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22           <sup>62</sup> AR 21 (internal record citations omitted).

23           <sup>63</sup> Plaintiff's MSJ at 9.

1 when claimed limitations stem from reported pain.<sup>64</sup> However, ALJs must keep in  
2 mind that a claimant need not be “utterly incapacitated” in order to be disabled,  
3 and a disabled individual should not be penalized for trying to lead as close to a  
4 “normal” life as her disability allows.<sup>65</sup>

5 To undermine a claimant’s credibility, the activity in question must actually  
6 contradict the claimant’s symptom reports and/or involve spending a “substantial”  
7 part of the day using skills that are transferable to a work setting.<sup>66</sup> Courts in this  
8 Circuit have “repeatedly asserted that the mere fact that a [claimant] has carried  
9 on certain daily activities, such as grocery shopping, driving a car, or limited  
10 walking for exercise, does not in any way detract from her credibility as to her  
11 overall disability.”<sup>67</sup> Thus, to allow for meaningful review—and ensure that a  
12 claimant’s reported activities are not unfairly held against her—an ALJ “must

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14 <sup>64</sup> See, e.g., *Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir. 1989) (“[I]f, despite his claims  
15 of pain, a claimant is able to perform household chores and other activities that  
16 involve many of the same physical tasks as a particular type of job, it would not be  
17 farfetched for an ALJ to conclude that the claimant’s pain does not prevent the  
18 claimant from working.”).

19 <sup>65</sup> *Id.*; see also *Reddick*, 157 F.3d at 722 (“Several courts, including this one, have  
20 recognized that disability claimants should not be penalized for attempting to lead  
21 normal lives in the face of their limitations.”).

22 <sup>66</sup> See *Orn v. Astrue*, 495 F.3d 625, 639 (9th Cir. 2007).

23 <sup>67</sup> *Id.*

1 make specific findings relating to the daily activities and their transferability to  
2 conclude that a claimant's daily activities warrant an adverse credibility  
3 determination."<sup>68</sup>

4 Here, the ALJ pointed to a few "daily activities" that she found to be  
5 inconsistent with Plaintiff's reports regarding the intensity, persistence, and  
6 limiting effects of her symptoms. The Court addresses each activity below.

7 *b. Caring for Family Members: Substantial evidence does not*  
8 *support the ALJ's finding.*

9 As to Plaintiff caring for her son and mother, aside from mentioning that  
10 Plaintiff took her son to the library, the ALJ failed to articulate which activities  
11 were supposedly inconsistent with Plaintiff's symptom reports. The ALJ likewise  
12 failed to explain how any of Plaintiff's reported activities, including taking her son  
13 to the library, were either inconsistent with her other statements or demonstrated  
14 skills transferable to a work setting.<sup>69</sup> While an ALJ might reasonably infer that  
15 caring for a family member involves responsibilities that are generally inconsistent  
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19 <sup>68</sup> *Orn*, 495 F.3d at 639 (cleaned up) (quoting *Burch v. Barnhart*, 400 F.3d 676, 681  
20 (9th Cir. 2005)).

21 <sup>69</sup> *See id.* (cleaned up) (quoting *Burch*, 400 F.3d at 681). *Cf. also Burch*, 400 F.3d at  
22 681 (upholding denial that was based in part on determining that the claimant  
23 performed daily activities that were transferable to a work setting).

1 with many common *physical* limitations<sup>70</sup>—or even certain mental limitations—the  
 2 same is not necessarily true for anxiety-based limitations, which are highly  
 3 individual in nature and are frequently linked to external factors such as the  
 4 physical or social environment.<sup>71</sup> When a claimed impairment is tied to stress and  
 5 mental illness, the Social Security Administration has recognized the “importance  
 6 of thoroughness in evaluation on an individualized basis,” saying the following:

7           Individuals with mental disorders often adopt a highly  
 8 restricted and/or inflexible lifestyle within which they appear to  
 9 function well. Good mental health services and care may enable  
 10 chronic patients to function adequately in the community by lowering  
 psychological pressures, by medication, and by support from services  
 such as outpatient facilities, day-care programs, social work  
 programs and similar assistance.

11           The reaction to the demands of work (stress) is highly  
 12 individualized, and mental illness is characterized by adverse  
 13 responses to seemingly trivial circumstances. . . . A person may  
 14 become panicked and develop palpitations, shortness of breath, or  
 feel faint while riding in an elevator; another may experience terror  
 and begin to hallucinate when approached by a stranger asking a  
 question. Thus, the mentally impaired may have difficulty meeting  
 the requirements of even so-called “low-stress” jobs.

15           Because response to the demands of work is highly  
 16 individualized, the skill level of a position is not necessarily related to  
 the difficulty an individual will have in meeting the demands of the  
 job.<sup>72</sup>

17           Here, the ALJ seemingly ignored the individualized nature of Plaintiff’s  
 18 mental-disorder impairments. In contrast to a work-like setting, Plaintiff reported

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 20 <sup>70</sup> *Cf. Sample v. Schweiker*, 694 F.2d 639, 642 (9th Cir. 1982) (The ALJ “is entitled  
 21 to draw inferences logically flowing from the evidence.”).

22 <sup>71</sup> See Social Security Ruling (SSR) 85-15 at \*6 (1985).

23 <sup>72</sup> *Id.*

1 performing family-care duties—mostly unspecified—within the controlled and  
 2 accommodating environment of her own home.<sup>73</sup> She could literally “feel at home”  
 3 while caring for the two people with whom she was closest. Courts have  
 4 frequently recognized that “many home activities are not easily transferable to  
 5 what may be the more grueling environment of the workplace.”<sup>74</sup> But the ALJ  
 6 provided no explanation regarding which home activities were at issue or how they  
 7 showed an ability to perform work activities in a work environment.

8 None of Plaintiff’s symptom reports are truly inconsistent with any of her  
 9 reported care activities, including acting as her son’s primary caregiver.<sup>75</sup> Rather,  
 10 the opposite appears true. For example, *consistent* with her symptom reports,  
 11 Plaintiff described needing her mother’s help with caring for her son about 1–3  
 12 times per week because of panic attacks.<sup>76</sup> Plaintiff’s family-care activities, so far  
 13 as they are described in the record, are not clear and convincing reasons for  
 14 rejecting her symptom reports, and the ALJ erred in finding otherwise.

15 a. *Plaintiff’s rare public outings were consistent with her symptom*  
 16 *reports.*

17 Plaintiff stated that she would occasionally leave the comfort and familiarity  
 18 of home to take her son to the library or go grocery shopping, usually with a close

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 20 <sup>73</sup> See, e.g., AR 43, 264, 268, 291, 486, 746.

21 <sup>74</sup> *Fair*, 885 F.2d at 603.

22 <sup>75</sup> AR 43.

23 <sup>76</sup> AR 43–44.

1 friend.<sup>77</sup> Again, the ALJ's decision leaves unclear how these activities contradict  
2 any of Plaintiff's symptom reports. Plaintiff never claimed to be utterly incapable  
3 of going out in public; she instead consistently reported that it was *difficult* to go  
4 out in public—especially if there was likely to be lots of strangers—because such  
5 outings were stressful and increased the likelihood of panic attacks.<sup>78</sup> Plaintiff  
6 described possessing a high level of control over whether, when, and how she  
7 engaged in public outings.<sup>79</sup> For both the library and the grocery store, Plaintiff  
8 could choose not to go, take a break, or leave early, depending on her symptoms at  
9 the time.

10 Far from being daily activities, Plaintiff's reported ventures into public  
11 spaces were brief and infrequent. Even then, she was almost always accompanied  
12 by one of the few people she trusted, and she still reported experiencing anxiety,  
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15 <sup>77</sup> See, e.g., AR 304.

16 <sup>78</sup> See, e.g., AR 209 (reporting difficulty going to the grocery store and choosing  
17 times when fewer people will be there); AR 262 (“[B]eing in public is also a trigger  
18 for her but her panic attacks can occur without triggers.”); AR 599 (listing several  
19 of Plaintiff's triggers as including, among other things, loud noises, people arguing,  
20 crowded places, and being in a small space for too long).

21 <sup>79</sup> See, e.g., AR 802 (describing some coping mechanisms used); *id.* at 813 (making a  
22 plan with her therapist as to how to go grocery shopping by herself despite the high  
23 level of associated anxiety).

1 sometimes needing to take breaks to prevent or stop panic attacks.<sup>80</sup> It is  
 2 therefore unclear why the ALJ considered Plaintiff's rare outings to be inconsistent  
 3 with any of her symptom reports, much less those regarding frequency and  
 4 severity. For example, nothing about Plaintiff pushing herself to occasionally go to  
 5 the library and grocery store contradicts her reports of anxiety and suffering panic  
 6 attacks several times per week. Nor do they conflict with Plaintiff's reports that  
 7 during a panic attack she could feel as though the walls were closing in and  
 8 experience a racing heart, racing thoughts, sweaty palms, and/or shortness of  
 9 breath.<sup>81</sup> Accordingly, Plaintiff's limited public outings indicated in the record  
 10 were not a valid basis for discounting her symptom reports.

11 *b. Plaintiff's limited social activities were consistent with her*  
 12 *symptom reports.*

13 The same flaws as those discussed above apply to the ALJ's use of Plaintiff's  
 14 single camping trip and limited dating activities to discount her symptom reports.<sup>82</sup>  
 15 Just as with Plaintiff's general caretaking activities and her limited public outings,  
 16 nothing about Plaintiff's social life appears inconsistent with her statements

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17  
 18 <sup>80</sup> AR 802 (Plaintiff reporting a rare instance in which she went to the grocery store  
 19 *without* a friend, during which she "made it through" only after taking a break in  
 20 the bathroom, splashing water on her face, and using a tapping coping technique.)

21 <sup>81</sup> See, e.g., AR 205, 262, 771, 745.

22 <sup>82</sup> See AR 21. Additionally, the rare reports of Plaintiff dating and the single  
 23 instance of camping are not "daily activities."

1 regarding the severity or frequency of her symptoms.<sup>83</sup> In choosing her limited  
2 social activities, Plaintiff again had complete control over whether, where, and how  
3 she met with people. The overall record shows that her social circle was limited to  
4 family, a few close friends, and occasionally a boyfriend.<sup>84</sup> And Plaintiff  
5 consistently reported that she suffered from increased anxiety related to dating,  
6 meeting new people, and even socializing with family members.<sup>85</sup> A person may  
7 suffer from anxiety and panic attacks, even to a disabling degree, without  
8 necessarily being a complete recluse.<sup>86</sup>

9         There are few reports in the record of Plaintiff engaging in social activities,  
10 and fewer still which describe the nature of the activity beyond vague terms such  
11

12  
13 <sup>83</sup> The ALJ also points to Plaintiff “going shopping with a friend,” seemingly  
14 viewing it as a social activity inconsistent with Plaintiff’s symptom reports. *See*  
15 AR 21. However, as discussed further above, the shopping reported by Plaintiff  
16 was for groceries, and she brought her close friend for support with her anxiety.  
17 *See, e.g.*, AR 802. There is no indication it was done for fun or for the primary  
18 purpose of meeting with her friend.

19 <sup>84</sup> *See, e.g.*, AR 269, 426, 803; *see also* AR 541 (Plaintiff reporting her mother as her  
20 best friend).

21 <sup>85</sup> *See, e.g.*, AR 426, 430, 566, 757, 813.

22 <sup>86</sup> *See Fair*, 885 F.2d at 603 (a claimant need not be “utterly incapacitated” to be  
23 disabled).

1 as “socializing.”<sup>87</sup> Further, for those rare instances in which the activities *were*  
2 described with some specificity, the record shows they were subject to limits and  
3 precautions that reflect—not contradict—Plaintiff’s symptom reports. For  
4 example, Plaintiff would generally limit meeting new people to one at a time, she  
5 “hung out” with her boyfriend within the comfort of her own home, and the record  
6 does not suggest that Plaintiff ever did anything further outside her comfort zone  
7 than going camping with several family members.<sup>88</sup> Notably, that camping trip  
8 was Plaintiff’s first ever and took place about two years into her course of  
9 treatment.<sup>89</sup>

10 Contrary to the ALJ’s findings, the social activities that are described in the  
11 record are fully consistent with her “statements about the intensity, persistence,  
12 and limiting effects of her symptoms.”<sup>90</sup> The ALJ failed to explain how *any* of  
13 Plaintiff’s social activities contradicted *any* of her statements, let alone how specific  
14

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15 <sup>87</sup> See, e.g., AR 301, 426.

16 <sup>88</sup> AR 759 (“She said he came to her house and they talked and ate dinner.”);  
17 AR 802 (“[Plaintiff] said she has never been camping and she normally wouldn’t  
18 have went camping. [She] said she had anxiety, but still went and experienced it.  
19 The camping and meeting new people was out of her comfort zone, but overall she  
20 said it went well.”); AR 803 (complying with therapist’s recommendation by  
21 pushing herself to go to a friend’s house and meet one new person).

22 <sup>89</sup> AR 802 (reporting in July 2019 going camping for the first time).

23 <sup>90</sup> See AR 21.

1 activity contradicted specific symptom reports. The ALJ thus failed to provide the  
 2 requisite “specific, clear, and convincing” reasons supported by substantial  
 3 evidence for rejecting Plaintiff’s symptom reports.<sup>91</sup>

4 5. The ALJ erred in finding Plaintiff’s improvement was inconsistent with  
 5 her symptom reports.

6 The ALJ also repeatedly cited Plaintiff’s improvement over the years as a  
 7 basis for discounting her testimony.<sup>92</sup> The ALJ referred broadly to reports of  
 8 improvement in the treatment records, Plaintiff’s coping skills, and her “greater  
 9 ability to socialize over time, as she went camping, took her son to the library,  
 10 spent time with another parent, and began dating.”<sup>93</sup> As discussed above, the  
 11 latter social abilities were in no way inconsistent with Plaintiff’s symptom reports,  
 12 but they do indicate at least some level of improvement. However, the nature,  
 13 extent, and significance of any improvement is left unexplained.

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15  
 16 <sup>91</sup> See *Ghanim*, 763 F.3d at 1163 (quoting *Lingenfelter*, 504 F.3d at 1036). “General  
 17 findings are insufficient;” rather, the ALJ must identify what symptom claims are  
 18 being discounted and what evidence undermines these claims. *Id.* (quoting *Lester v.*  
 19 *Chater*, 81 F.3d 821, 834 (9th Cir. 1995)); *Thomas v. Barnhart*, 278 F.3d 947, 958  
 20 (9th Cir. 2002) (requiring the ALJ to sufficiently explain why she discounted  
 21 claimant’s symptom claims).

22 <sup>92</sup> AR 21–23 (internal record citations omitted).

23 <sup>93</sup> AR 21–23.

1           a. Whether a claimant's improvement undermines her disability  
 2           claim depends on whether, and when, her symptoms no longer  
 3           meet the Act's definition of disability.

4           When evaluating symptom reports, ALJs are directed to consider the effect  
 5           that medication and other forms of treatment have on a claimant's symptoms.<sup>94</sup>  
 6           Additionally, the ALJ must "sufficiently consider the duration of, or chronological  
 7           fluctuation in, [the claimant]'s symptoms."<sup>95</sup> A claimant may have been disabled  
 8           for a qualifying portion of the time, even if not for the full period leading up to the  
 9           administrative hearing.<sup>96</sup> This means that a claimant's symptom reports cannot be  
 10          discredited as a whole because of changes over time or inconsistencies relevant  
 11          only to statements describing a certain period.<sup>97</sup>

12          "That a person who suffers from severe panic attacks, anxiety, and  
 13          depression makes some improvement does not mean that the person's impairments  
 14          no longer seriously affect her ability to function in a workplace."<sup>98</sup> Reports of

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15  
 16          <sup>94</sup> 20 C.F.R. § 416.929(c)(3)(iv)-(v); *id.* at § 404.1529(c)(3)(iv)-(v); *see Warre v.*  
 17          *Comm'r of Soc. Sec. Admin.*, 439 F.3d 1001, 1006 (9th Cir. 2006); *Tommasetti v.*  
 18          *Astrue*, 533 F.3d 1035, 1040 (9th Cir. 2008) (a favorable response to treatment can  
 19          undermine a claimant's complaints of debilitating pain or other severe limitations).

20          <sup>95</sup> *Smith*, 14 F.4th at 1112.

21          <sup>96</sup> *Id.* at 1114.

22          <sup>97</sup> *Id.* at 1112.

23          <sup>98</sup> *Holohan v. Massanari*, 246 F.3d 1195, 1205 (9th Cir. 2001).

1 improvement in mental health “must be interpreted with an understanding of the  
 2 patient’s overall well-being and the nature of her symptoms” as well as with an  
 3 awareness that “improved functioning while being treated and while limiting  
 4 environmental stressors does not always mean that a claimant can function  
 5 effectively in a workplace.”<sup>99</sup> Without more, general references to improvement are  
 6 insufficient to render repeatedly reported symptoms “inconsistent” and so not  
 7 credible.<sup>100</sup> To undercut a claimant’s credibility and/or her disability claim, the  
 8 improvement in question must be of the kind and degree that brings her symptoms  
 9 outside the Act’s definition of disability.<sup>101</sup> The ultimate question is “whether the  
 10 severity of the problem had decreased sufficiently to enable [her] to engage in  
 11 gainful activity.”<sup>102</sup>

12           ***b.    The record shows, and Plaintiff freely acknowledged, that***  
 13           ***treatment significantly helped with her symptoms.***

14           Here, Plaintiff acknowledged at the hearing that she had noticed definite  
 15 improvement during the past “year or two.”<sup>103</sup> She said the medications have  
 16 helped, but since the start and continuing to the date of the hearing, her

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17  
 18 <sup>99</sup> *Garrison v. Colvin*, 759 F.3d 995, 1017 (9th Cir. 2014) (cleaned up).

19 <sup>100</sup> *See Ryan v. Comm’r of Soc. Sec.*, 528 F.3d 1194, 1200–01 (9th Cir. 2008).

20 <sup>101</sup> *See id.*; *Holohan*, 246 F.3d at 1205.

21 <sup>102</sup> *See Warre*, 439 F.3d at 1006 (discussing the issue of medical improvement in the  
 22 context of terminating benefits for a prior-established disability).

23 <sup>103</sup> AR 45.

1 medication regimen was “still kind of a little trial-and-error,” with her doctor  
 2 altering her medication combinations and seeing how she reacted.<sup>104</sup> Plaintiff  
 3 concluded at the hearing that she was feeling better than before, but her  
 4 medication regimen was still “not quite where [she] would want it to be.”<sup>105</sup> This  
 5 testimony is consistent with the medical records.<sup>106</sup>

6 *i. 2017: Beginning of Treatment Records*

7 The earliest treatment records provided are from 2017.<sup>107</sup> Starting in late  
 8 August 2017, treatment records show Plaintiff reported feeling “very anxious” and  
 9 she was suffering about 2–3 panic attacks per week.<sup>108</sup> During the initial  
 10 assessment conducted by Central Washington Comprehensive Mental Health,  
 11 Plaintiff’s Patient Health Questionnaire (PHQ) score indicated mild depression,

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12  
 13 <sup>104</sup> AR 46.

14 <sup>105</sup> AR 46.

15 <sup>106</sup> *See, e.g.*, AR 293 (March 2018, increasing anxiety medication dosage); AR 790  
 16 (May 2019, stopping one anxiety medication, starting a new one, and starting a  
 17 sleep medication); AR 824 (October 2019, starting trial of a new sleep medication);  
 18 AR 860 (February 2020, adjusting sleep medications).

19 <sup>107</sup> This is despite Plaintiff’s claimed onset date of January 1, 2011, and references  
 20 in the record to Plaintiff being seen by crisis services in 2005, completing an intake  
 21 assessment in June 2008, and receiving counseling in 2011. *See, e.g.*, AR 263, 266,  
 22 540.

23 <sup>108</sup> AR 269, 618, 719.

1 her General Anxiety Disorder (GAD) score indicated moderate anxiety, and her  
 2 PTSD Checklist (PCL) score was clinical for PTSD.<sup>109</sup> Throughout the rest of the  
 3 year, each of those scores fluctuated significantly.<sup>110</sup> For instance, shortly after  
 4 beginning treatment, Plaintiff's GAD score dropped, first to non-clinical and then  
 5 to mild for anxiety.<sup>111</sup> However, referring to these comparatively low scores,  
 6 Plaintiff's therapist noted, "I think there was underreporting based on [Plaintiff]'s  
 7 verbal reports and presentation."<sup>112</sup>

8 *ii. 2018: Varying Symptoms & Concerns of Underreporting*

9 In early 2018, Plaintiff said she felt her new medication was helping and her  
 10 mood had been "better."<sup>113</sup> Notably, shortly thereafter, Plaintiff discovered her  
 11 uncle deceased in his home.<sup>114</sup> When Plaintiff's GAD score indicated mild anxiety  
 12 and she scored non-clinical for PTSD, Ms. Morgan again said, "I think these scores  
 13 indicate gross underreporting based on [Plaintiff]'s presentation and recent trauma  
 14 of finding her uncle's dead body."<sup>115</sup> Then, over the course of 2018, Plaintiff  
 15 reported needing to use the coping method of mindful breathing at least 10 times

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16  
 17 <sup>109</sup> AR 266.

18 <sup>110</sup> *See, e.g.*, AR 274, 304 306, 617–18.

19 <sup>111</sup> AR 304, 306.

20 <sup>112</sup> AR 306.

21 <sup>113</sup> AR 301.

22 <sup>114</sup> AR 864.

23 <sup>115</sup> AR 285, 299.

1 per day, with the frequency of her panic attacks ranging from just a few per week  
 2 to over 20 in a month.<sup>116</sup> Her scores relating to anxiety, PTSD, and depression  
 3 each varied significantly, with her GAD scores in particular ranging from mild to  
 4 severe.<sup>117</sup>

5 Also in 2018, on several occasions, treatment providers expressed further  
 6 concerns that Plaintiff was continuing to underreport her symptoms:

- 7 • April 2018, “I do think [Plaintiff] minimizes or is not aware of her level of  
 8 depression and anxiety as I assess her as much more depressed and  
 9 anxious than indicated on these assessments.”<sup>118</sup>
- 10 • March 2018, “I asked about the PHQ and GAD scores since she seems to  
 11 minimize her symptoms on paper, but [she] is easily triggered to tears  
 12 when we discuss things.”<sup>119</sup>

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13  
 14 <sup>116</sup> AR 287.

15 <sup>117</sup> AR 615–16 (April 2018, GAD score reflecting moderate anxiety); AR 426 (June  
 16 2018, GAD for mild anxiety); AR 420 (July 2018, GAD for moderate anxiety);  
 17 (August 2018, GAD for severe anxiety and PHQ-9 score for moderate depression);  
 18 AR 570 (September 2018, progress on reducing anxiety and panic attacks, but  
 19 continued work needed); AR 575 (September 2018, “anxiety has improved with  
 20 lorazepam.”); AR 545 (October 2018, reporting 20 panic attacks in the last month  
 21 but also noting “progress based off her GAD-7 score”); AR 566 (same);

22 <sup>118</sup> AR 283.

23 <sup>119</sup> AR 297.

- 1 • Later in March 2018, “Again, I think [Plaintiff] is underreporting as she  
2 was tearful and expressed feeling very stressed.”<sup>120</sup>
- 3 • July 2018, “I believe she doesn’t feel she deserves to complain, thus  
4 doesn’t express how anxious she feels[,] especially on paper.”<sup>121</sup>
- 5 • August 2018, “I told her I wondered if she was filling it out correctly,  
6 because based on how you present and report I would expect your anxiety  
7 score to be higher. . . . These scores [upon retesting with further  
8 instruction] would reflect that progress has not been made on [decreasing  
9 anxiety and panic attacks].”<sup>122</sup>

10 *iii. 2019–2020: Some Level of Sustained Improvement*

11 In early 2019, Plaintiff reported her panic attacks were “probably a little  
12 better.”<sup>123</sup> Similarly, the records for the rest of 2019 show significant variation in  
13 symptoms, with Plaintiff reporting some improvement in the severity and duration  
14 of her panic attacks but no change in their frequency. Below are excerpts from  
15 some of the relevant treatment notes:

- 16 • February 2019, “still having panic attacks and they are the same[,] but  
17 she said she is able to control them better than before.”<sup>124</sup>

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18  
19 <sup>120</sup> AR 291.

20 <sup>121</sup> AR 424.

21 <sup>122</sup> AR 486.

22 <sup>123</sup> AR 757.

23 <sup>124</sup> AR 759.

- 1 • March 2019, “some improvement on [anxiety and panic attacks] as she  
2 does a good job at using her coping skills to get through situations such  
3 as a panic attack and health.”<sup>125</sup>
- 4 • April 2019, “continues to experience frequent anxiety and panic attack  
5 symptoms that have not consistently decreased in frequency for panic  
6 attacks and her overall anxiety continues to occur daily.”<sup>126</sup>
- 7 • May 2019, “She said she has had panic attacks for a couple days that  
8 were out of control.”<sup>127</sup>
- 9 • June 2019, “GAD-7 scores from December 2018 to present that showed  
10 she has consistently been at mild anxiety, which shows stability for  
11 [Plaintiff] in her anxiety.”<sup>128</sup>
- 12 • August 2019, “As for her anxiety, she states she . . . still has occasional  
13 break through anxiety and has found the Buspar to be very helpful in  
14 alleviating her symptoms.”<sup>129</sup>
- 15 • September 2019, “when she has her panic attacks the one tab of  
16 Lorazepam is not seeming to be as effective as it was in the past.”<sup>130</sup>

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17  
18 <sup>125</sup> AR 469.

19 <sup>126</sup> AR 776.

20 <sup>127</sup> AR 795.

21 <sup>128</sup> AR 800.

22 <sup>129</sup> AR 804.

23 <sup>130</sup> AR 820.

- 1           • October 2019, “Increase in panic attacks, only change is she hasn’t been  
2           sleeping.”<sup>131</sup>
- 3           • December 2019, “she states she has had a notable decrease in anxiety  
4           attacks since last visit where the dose was adjusted . . . . [Plaintiff]  
5           continues to find the Buspar to be very helpful as well in alleviating her  
6           symptoms.”<sup>132</sup>

7           Then, by early 2020, Plaintiff’s treatment records indicate she was “stable in  
8           her anxiety and depression.”<sup>133</sup> She reported fewer panic attacks, saying they were  
9           “still there” but she thought “they are better than what they have been.”<sup>134</sup> She  
10          reported 2–3 panic attacks per week, though shortened in duration to about 5–10  
11          minutes. Shortly before the administrative hearing, in late-February 2020,  
12          Plaintiff stated that “[o]verall, . . . she is doing better,” though she also reported “a  
13          mild increase of anxiety over the last several weeks,” which she attributed to the  
14          recent therapy work she had done to address her trauma.<sup>135</sup>

15                c.    The ALJ’s decision leaves unclear when, if ever, Plaintiff’s  
16                        symptoms improved to the point she could no longer qualify for  
17                        disability.

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18  
19          <sup>131</sup> AR 828.

20          <sup>132</sup> AR 835.

21          <sup>133</sup> AR 847.

22          <sup>134</sup> AR 850.

23          <sup>135</sup> AR 855.

1           The record indicates that Plaintiff's symptoms—particularly her panic-  
2           attack symptoms—varied significantly, but that they generally improved over the  
3           course of more than two years of attending counseling sessions and taking  
4           prescribed medications. Nonetheless, “[t]he ALJ’s decision does not adequately  
5           address this progression as it relates to [Plaintiff]’s credibility.”<sup>136</sup> Summarizing  
6           some of Plaintiff’s reported symptoms and then stating that her symptoms  
7           improved with treatment did not satisfy the ALJ’s duty to provide clear and  
8           convincing reasons for discrediting those symptom reports.<sup>137</sup>

9           Despite relying heavily on improvement to discredit Plaintiff’s symptom  
10          reports generally, the ALJ never distinguished or otherwise compared Plaintiff’s  
11          early symptoms with her later symptoms. Indeed, the ALJ provided no meaningful  
12          analysis of how Plaintiff’s symptoms improved over time. As such, the ALJ’s  
13          decision not only leaves unclear the extent of Plaintiff’s improvement, but it also  
14          fails to establish when, if ever, Plaintiff’s symptoms no longer met the Act’s  
15          severity requirements.<sup>138</sup> The ALJ reversibly erred by discounting Plaintiff’s

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19          <sup>136</sup> *Smith*, 14 F.4th at 1113.

20          <sup>137</sup> *See Lambert*, 980 F.3d at 1278.

21          <sup>138</sup> The ALJ’s decision does not state whether Plaintiff’s symptoms ever met the  
22          Act’s severity requirements, but, logically, improvement would be relevant only if  
23          the symptoms were at some point sufficiently severe.

1 symptom reports without describing the nature, extent, or timing of Plaintiff's  
 2 improvement or how such improvement contradicted Plaintiff's claims.<sup>139</sup>

### 3 **C. Other Issues Raised: Impacted by Error**

4 Plaintiff also raises issues with the ALJ's discounting of opinion evidence  
 5 from treating provider Mona Morgan, LMHC, examining provider David Morgan,  
 6 PhD, and treating therapist Lacy Villamar, licensed clinical social worker  
 7 associate.<sup>140</sup> The Court need not address these issues because the error as to  
 8 Plaintiff's own symptom reports necessarily impacted the ALJ's treatment of other  
 9 record evidence. Similarly, because the ALJ's decision contains legal error, the  
 10 Court cannot ascertain whether substantial evidence supports the ALJ's  
 11 assessment of Plaintiff's RFC.

12 The Court declines to apply the credit-as-true rule, because it is far from  
 13 certain that if the errors identified were corrected the ALJ would be required to  
 14 find Plaintiff legally disabled.<sup>141</sup> Additionally, even if Plaintiff's disability were

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15  
 16 <sup>139</sup> See *Lambert*, 980 F.3d at 1278 ("Because the ALJ did not provide enough  
 17 'reasoning in order for us to meaningfully determine whether the ALJ's conclusions  
 18 were supported by substantial evidence,' we cannot treat the error as harmless."  
 19 (quoting *Treichler*, 775 F.3d at 1103)); see also *Wade v. Saul*, 850 F. App'x 568, 569  
 20 (9th Cir. 2021) (unreported).

21 <sup>140</sup> Plaintiff's MSJ at 11–19.

22 <sup>141</sup> See 42 U.S.C. § 405(g); *Leon v. Berryhill*, 880 F.3d 1041, 1045 (9th Cir. 2017)  
 23 (explaining the credit-as-true rule "was intended as a rare and prophylactic

1 clearly established, it would still be unclear when, if ever, she improved to the  
 2 point of no longer being disabled under the Act.

### 3 **V. Conclusion**

4 The Court affirms the ALJ's decision only to the extent it denied Plaintiff's  
 5 Title II claim and Child's-Insurance-Benefits claim. As to Plaintiff's Title XVI  
 6 claim, the Court reverses the ALJ's decision and remands this matter for  
 7 reevaluation of the record evidence and further explanation of the results in  
 8 conducting the sequential evaluation process under 20 C.F.R. § 416.920(a). If the  
 9 ALJ again finds Plaintiff's symptom reports to be inconsistent with other evidence,  
 10 the ALJ is instructed to explain such inconsistencies with specificity. Likewise, if  
 11 the ALJ again relies on improvement through medications and other treatment to  
 12 discount Plaintiff's symptom reports, the ALJ shall articulate the relevant  
 13 improvements, including the nature, degree, and timing of such improvements, and  
 14 how they relate to Plaintiff's ability to sustain gainful employment.

15 Accordingly, **IT IS HEREBY ORDERED:**

- 16 1. The case caption is to be **AMENDED** consistent with footnote 2.
- 17 2. The decision of the ALJ is **AFFIRMED in part, REVERSED in**  
 18 **part, and REMANDED.**
- 19 3. Plaintiff's Motion for Summary Judgment, **ECF No. 13**, is  
 20 **GRANTED in part and DENIED in part.**

21 \_\_\_\_\_  
 22 exception to the ordinary remand rule when there is no question that a finding of  
 23 disability would be required if claimant's testimony were accepted as true").

1           4.     The Commissioner's Motion for Summary Judgment, **ECF No. 15**, is  
2                   **GRANTED in PART and DENIED in part.**

3           5.     The Clerk's Office shall enter **JUDGMENT** in favor of Plaintiff.

4           6.     The case shall be **CLOSED**.

5           **IT IS SO ORDERED.** The Clerk's Office is directed to file this Order and  
6 provide copies to all counsel.

7           **DATED** this 24<sup>th</sup> day of February 2022.

8  
9                               s/Edward F. Shea  
                              EDWARD F. SHEA  
10                           Senior United States District Judge